

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE FORMAL)	
COMPLAINT OF FISHING, INC.)	
AGAINST DELMARVA POWER & LIGHT)	PSC DOCKET NO. 18-1018
COMPANY DISPUTING DISCONNECT AND)	
THE AMOUNT OF BILL ALLEGING THEFT)	
OF ELECTRIC SERVICE)	
(Filed August 7, 2018))	

ORDER NO. 9320

AND NOW, this 15th day of January, 2019, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, On August 8, 2018, Fishing, Inc., filed a Complaint against Delmarva Power & Light Company ("Delmarva" or "DPL") alleging, *inter alia*, that Delmarva wrongly disconnected its electric service at its 436 E. Ayre Street, Newport, DE premises on July 10, 2018 after it had entered into a dispute, in good faith, over a revised bill from Delmarva that combined Delmarva's calculation of Complainant's outstanding bill at its 436 E. Ayre Street, Newport, DE premises together with its outstanding bill at Complainant's 434 E. Ayre Street, Newport, DE premises; and

WHEREAS, on October 24, 2018, in its Amended Answer, Delmarva denied that it had wrongfully disconnected Complainant's service at its 436 E. Ayre Street, Newport, DE premises, alleging that Complainant's outstanding bill for its 434 E. Ayre Street, Newport DE premises was, in large part, a result of Delmarva's calculation of Complainant's theft of services at its 434 E. Ayre Street, Newport, DE premises from meter tampering (which the Complainant denies) which it

then combined with Complainant's bill for its 436 E. Ayre Street, Newport, DE premises; and

WHEREAS, Delmarva alleges that combining Complainant's bills for the two (2) separate premises and subsequent disconnection for non-payment of the combined bills is permitted by its tariff; and

WHEREAS, Staff of the Public Service Commission and the Public Advocate dispute that Delmarva is allowed to combined outstanding bills at a sole customer's different address and accounts and then disconnect service for the non-payment of the combined bills; and

WHEREAS, in his "Finding and Recommendations of the Hearing Examiner" dated December 12, 2018, the Hearing Examiner, after considering extensive briefs of the parties on the issue, finds that Delmarva is not permitted to combine outstanding bills from a customer's two separate premises and then disconnect service for the failure to pay the combined bills; and

WHEREAS, the Hearing Examiner has recommended that Delmarva send a revised bill to Complainant for its service as its 436 E. Ayre Street, Newport, DE premises as of July 10, 2018 (the date of the wrongful disconnection) and provide the Complainant thirty (30) days to pay the revised bill, unless Complainant files a notice of a bona fide outstanding billing dispute as to the revised bill, which dispute will be considered by the Hearing Examiner in this Docket;

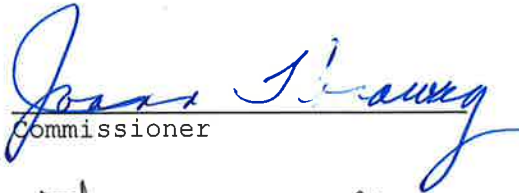
**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE
VOTE OF NO FEWER THAN THREE COMMISSIONERS:**

1. The Findings and Recommendations of the Hearing Examiner dated December 12, 2018 attached hereto as Exhibit "1" are adopted.

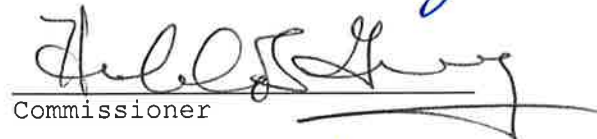
2. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Chairman



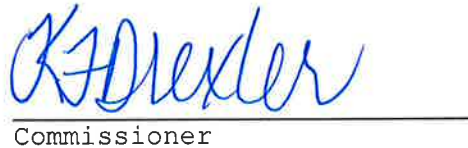
Commissioner



Commissioner



Commissioner



Commissioner

ATTEST:



Secretary





"Exhibit 1"

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE FORMAL)
COMPLAINT OF FISHING, INC.)
AGAINST DELMARVA POWER & LIGHT) PSC DOCKET NO. 18-1018
COMPANY DISPUTING DISCONNECT AND)
THE AMOUNT OF BILL ALLEGING THEFT)
OF ELECTRIC SERVICE)
(Filed August 7, 2018)

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

Dated: December 12, 2018
Glenn C. Kenton
Hearing Examiner

Table of Contents

	<u>Page</u>
I. APPEARANCES.....	1
II. BACKGROUND.....	2
A. FISHING, INC. COMPLAINT.....	2
B. DELMARVA ANSWER.....	2
C. PUBLIC ADVOCATE.....	3
III. PRE HEARING CONFERENCES AND PROCEDURAL MATTERS	3
A. PRE-HEARING CONFERENCE # 1.....	3
B. DELMARVA'S AMENDED ANSWER.....	5
C. PRE-HEARING CONFERENCE # 2.....	6
IV. BRIEFS OF THE PARTIES.....	7
A. DELMARVA'S OPENING BRIEF.....	7
B. ANSWERING BRIEF OF STAFF AND THE PUBLIC ADVOCATE.....	8
C. REPLY BRIEF OF DELMARVA.....	10
V. DISCUSSION	12
A. THE FACTS.....	12
B. THRESHOLD LEGAL ISSUE.....	13
VI. FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER.....	16
A. DECISION.....	16
B. REMEDY.....	17
C. PROPOSED ORDER.....	18

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE FORMAL)
COMPLAINT OF FISHING, INC. AGAINST)
DELMARVA POWER & LIGHT COMPANY) PSC DOCKET NO. 18-1018
DISPUTING DISCONNECT AND THE AMOUNT)
OF BILL ALLEGING THEFT OF ELECTRIC)
SERVICE)
(Filed August 7, 2018))

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

Glenn C. Kenton, duly-appointed Hearing Examiner in this Docket by Rajnish Barua, Executive Director of the Commission, pursuant to Rule 2.5.2 of the Rules of the Public Service Commission (26 DE Admin. Code, Chapter 1001. "PSC Rules" files this "Findings and Recommendations of the Hearing Examiner" in the captioned Docket.

I. Appearances

On behalf of the Applicant Delmarva Power and Light Company ("Delmarva", "DPL" or "the Company"):

By: LINDSAY B. ORR, ESQ.
Assistant General Counsel

On behalf of the Public Service Commission Staff ("Staff" or "Commission Staff"):

By: THOMAS D. WALSH, ESQ.
DEPUTY ATTORNEY GENERAL

On behalf of the Division of the Public Advocate ("DPA" or "Public Advocate"):

By: REGINA A. IORII, ESQ.
DEPUTY ATTORNEY GENERAL

On behalf of the Complainant, Fishing Inc.

By: Afolabi Forbarin
Owner

Francis Ikpatt
Business Manager

II. BACKGROUND

A. FISHING, INC. COMPLAINT

1. On August 8, 2018, Fishing, Inc., filed a Complaint against Delmarva Power & Light Company ("Delmarva" or "DPL") alleging, *inter alia*, that Delmarva wrongly disconnected its electric service on July 10, 2018 after it had entered into a dispute, in good faith, over a revised bill of \$ 106,000 for the period covering September, 2010 through December, 2016. The Complainant disputed Delmarva's claim that Fishing, Inc.'s meter had been tampered with which led, in large part, to the revised bill of \$ 106,000 from Delmarva. The Complainant also disputed the amount of the bill.

B. DELMARVA ANSWER

2. Delmarva in its answer filed September 4, 2018 denied all of the Complainant's allegations. Delmarva stated that when a service person originally visited the site of Complainant's operations at 434 E. Ayre Street, Wilmington, DE in December, 2016 for the purpose of disconnecting service for non-payment, the service person found that the Complainant's meter had been tampered with and that two (2) of the (3) phases had been diverted, thus only 1/3 of the usage was been properly recorded. According to Delmarva, after service for 434 E. Ayre Street was disconnected, it noticed a substantial increase in the electrical usage of Complainant's adjoining site at 436 E. Ayre Street.

Delmarva alleges that it determined that the load previously taken by Complainant's 434 E. Ayre Street premises had been diverted to Complainant's adjoining 436 E. Ayre Street premises that had been activated on July, 2016. According to Delmarva, it then worked for more than a year to determine the amount of the by-passed load as it alleges it is permitted to do pursuant to its tariff. This resulted in a revised bill to Complainant in the amount of \$ 106,000. When Complainant did not pay the revised combined bill, on July 10, 2018, Delmarva disconnected service to Complainant's 436 E. Ayre Street premises. Delmarva further responded that it had no record of a billing dispute with the Complainant when it disconnected service at either of its locations.

C. THE PUBLIC ADVOCATE

3. By letter of August 13, 2018, the Public Advocate exercised its statutory right of intervention in this Docket.

III. PRE HEARING CONFERENCES AND PROCEDURAL MATTERS

A. PRE-HEARING CONFERENCE # 1

4. On October 4, 2018, I held the first pre-hearing conference via telephone pursuant to PSC Rule 2.10. The conference was transcribed by a Court Reporter. During that conference, pursuant to the provisions of PSC Rule 2.12.1, I made a preliminary determination that there should be a different order of presentation at the upcoming Evidentiary Hearing by which the moving party (in this case, the Complainant, Fishing, Inc.) normally opens and closes the presentation of evidence as prescribed in PSC Rule 2.12.1. In particular, PSC Rule 2.12.1 prescribes that the Hearing Officer may determine a different presentation, "such as when

the evidence is peculiarly within the knowledge or control of another person." In the current matter, after review of the Complaint and the Answer, I made a preliminary determination that the evidence as to the pertinent facts, including the facts surrounding the various disconnection issues, is peculiarly within the knowledge of Delmarva and therefore Delmarva should open and close the proceedings.¹

5. Nevertheless, I stated that I was not aware of any rule or provision that would permit deviation from the burden of proof provisions of Rule 2.12.3 which provides as follows: "*The burden of proof shall be on the moving party, except when placed upon another party by law of Commission order.*" Therefore, in the current matter, even though Delmarva is to open and close the proceedings, the burden of proof as to the issue of the disconnections (and other relevant supporting issues) remains on the Complainant. It would be incumbent on the Complainant to offer substantial evidence, free from legal error, that the disconnections (and any other relevant facts) were not carried out according to the law, any rule of the Commission or any the tariff provision of Delmarva.²

6. Following the pre-hearing conference, I further noted in a letter to all parties that while the issues surrounding the disconnections of Complainant's service by Delmarva were subject to the jurisdiction of the Commission, nevertheless the issues surrounding the

¹ Pre-Hearing Conf. #1, Tr. p.23 @ 1-5.

² *Public Water Supply v. DiPasquale*, 735 A.2d 378 (Del. 1999), *Olney v. Cooch*, Del. Super., 425 A2d 610 (Del. 1981).

amount of the bill were not properly matters within the jurisdiction of the Commission but rather matters for Delaware's Courts.³

B. DELMARVA'S AMENDED ANSWER

7. Following the pre-hearing conference, counsel for the Public Advocate expressed continued confusion as to the evidence and the burden of proof in this matter. I concurred. In particular, it was still not clear as to whether Delmarva would offer evidence that the disconnection at Complainant's 436 E. Ayre Street premises was for non-payment or for meter tampering, or both? After consulting with all parties, Delmarva requested the opportunity to consult further with its personnel on this matter.

8. Following its further consultations, on October 24, 2018, Delmarva filed an Amended Answer. In its Amended Answer, Delmarva removed its allegation that the disconnection, on July 10, 2018, of Complainant's service at 436 E. Ayre Street was for meter tampering (the alleged meter tampering having occurred at Complainant's other address, 434 E. Ayre Street) and stated instead that the disconnection of Complainant's service on July 10, 2018 at 436 E. Ayre Street was for non-payment of Complainant's combined bill for both locations. According to Delmarva, the unpaid bill for Complainant's service at 436 E. Ayre Street included \$ 4726.89 for unpaid service at that address plus \$ 109,535.96 for its estimate of the theft of service at Complainant's other address at 434 E. Ayre Street. According to Delmarva's Amended Answer, the unpaid balance for the address at 436 E. Ayre Street has grown from \$ 4726.89

³ *Artesian Water v. Cynwyd Club Apts.* 297 A. 2d 387 (Del 1971).

to \$ 12,210.31 including late payment fees, reflecting a current unpaid balance for both locations, according to Delmarva, of \$ 121,746.21.

C. PRE-HEARING CONFERENCE # 2.

9. Following Delmarva's Amended Answer, I scheduled a second pre-hearing conference on October 26, 2018 pursuant to PSC Rule 2.10.1.2 in order to identify the (revised) issues that the parties intend to pursue. The second pre-hearing conference was also transcribed by a Court Reporter.

10. During the second pre-hearing conference, the parties disagreed on the fundamental issue of whether Delmarva's tariff and/or the PSC Rules permit Delmarva to transfer an unpaid account balance at a customer's one premises to the same customer's account at its second premises and then disconnect service for non-payment of the combined bill at the second premises? Delmarva said it believes it has the authority to do so.⁴ The Public Advocate said it believes the law is unresolved on this issue.⁵ Staff said that it had not had the opportunity to research the issue⁶ but expressed doubt that Delmarva's position was permitted.

11. Accordingly, the parties expressed support for briefing this issue prior to a public evidentiary hearing as its resolution would be critical to the resolution of the case. One party expressed an opinion that should the outcome of the resolution of this issue be adverse to Delmarva, the hearing "becomes a lot shorter" or "may not even become

⁴ Pre-Hearing #2, Tr. p.62 @5 - p.63 @10.

⁵ *Id.* p.63 @17-18.

⁶ *Id.* p.64 @ 18-21.

necessary.”⁷

12. By letter to the parties of October 26, 2018, I synthesized the issue to be briefed as follows:

“Can Delmarva transfer an outstanding balance from a customer’s one account to that same customer’s other account, as Delmarva says it has done in this matter, and then disconnect service to the transferee account for non-payment of both the current and transferred balance?”

The parties acquiesced in the framing of the issue to be briefed and the briefing schedule I proposed.

IV. BRIEFS OF THE PARTIES

A. DELMARVA’S OPENING BRIEF

13. In its opening brief, Delmarva alleged that its tariff and its previous communications with Staff and the Public Advocate permit Delmarva to transfer unpaid balances from a customer’s one account to another account, so long as the customer is the same. Delmarva cites, *inter alia*, Section IID of its electric tariff which states, “Service at new locations shall be rendered only when all bills for service to the Customer at any other locations have been paid, or credit arrangements satisfactory to the Company have been made.”⁸

14. In addition, Delmarva cites the Settlement Agreement in PSC Docket 02-231, approved in Order No. 6328, including various correspondences among the parties in connection therewith in which counsel to Delmarva stated, “As discussed, in the absence of fraud, misrepresentation or other bad faith conduct, as determined on a case by case basis, the practice to be followed

⁷ *Id.* p.77 @ 2-10.

⁸ PSC Del. No. 8 – Electric, Fourth Revised Leaf No. 9, Section IID (“Section IID”)

by Delmarva on a going forward basis is that balances will be transferred from one account to another where the same individual(s) appear(s) as the responsible party on both former and current accounts."⁹

B. ANSWERING BRIEF OF STAFF AND THE PUBLIC ADVOCATE

15. Staff and the Public Advocate, in a joint Answering Brief, disagree with the conclusions of Delmarva that it is permitted to transfer unpaid balances from a customer's account to the same customer's other account and then disconnect services from the second account for non-payment of the combined bills.

16. In support of their position, Staff and the Public Advocate point to the plain language of Delmarva's tariff: "[t]he use of service at two or more separate properties shall not be combined for billing purposes."¹⁰

17. Staff and the Public Advocate further argue that, even absent the language cited above, the definition in Delmarva's Tariff of "Premises" which states "multiple premises or sites under the same name are considered multiple customers"¹¹ makes it clear that the Complainant's accounts at two separate sites are separate accounts not to be combined.

18. Staff and the Public Advocate concede the language in Section IID of Delmarva's tariff provides, or could have provided, Delmarva with

⁹ Letter from Pamela J. Scott, Assistant General Counsel of Delmarva to Michael D. Sheehy, Public Advocate dated August 10, 2012 and letter from Pamela J. Scott to Ruth Ann Price, Division of Public Advocate dated January 25, 2013.

¹⁰ Tariff Section II, Application and Contract for Service, Paragraph C ("Paragraph C").

¹¹ Tariff, Definition of Terms, Fourth Revised Leaf No. 4 and Fourth Revised Leaf No. 6. The definition of "Customer" contains similar language.

recourse in the current situation. It would have permitted Delmarva to deny service to the Complainant's 436 E. Ayre Street premises when service was initiated in July, 2016 if Complainant has not paid its outstanding bill at 434 E. Ayre Street, including charges for the estimated costs of service theft. But Staff and the Public Advocate point out that Delmarva did not do this. Rather, Delmarva initiated service on July, 2016 for the Complainant at 436 E. Ayre Street in spite of an apparent (or potential) outstanding balance at its 434 E. Ayre Street premises.

19. In response to Delmarva's contention that it was not aware in July, 2016 of the extent or amount of the amounts due for the Complainant's 434 E. Ayre Street premises when it initiated service for the Complainant at its 436 E. Ayre Street premises and that it was not until its service person visited Complainant's 434 E. Ayre Street premises in December, 2016 to disconnect service for non-payment that it became aware of the alleged meter tampering, Staff and the Public Advocate point out, as Delmarva has stated in its Amended Answer, Delmarva had in its files photo(s) from 2010 from the Complainant's 434 E. Ayre Street premises showing the meter tampering. Therefore, according to Staff and the Public Advocate, Delmarva either knew of or should have known of the outstanding amounts due for 434 E. Ayre Street in July, 2016 when it initiated service for the Complainant at 436 E. Ayre Street.

20. Further, Staff and the Public Advocate argue that Delmarva has substantial recourse in both the civil and criminal courts of the State of Delaware should it be able to prove the Complainant is guilty

of theft of electrical services.¹²

21. Finally, Staff and the Public Advocate dispute Delmarva reliance on the correspondence between Delmarva, Staff and the Public Advocate in connection with the Settlement Agreement for Delmarva's Customer Service issues in Docket 02-231. Staff and the Public Advocate contend that such letters are non-binding on the current Complainant and, nevertheless, are ineffective to the extent that any such correspondence is at odds with the provisions Delmarva's tariff.

C. REPLY BRIEF OF DELMARVA

22. In its Reply Brief, Delmarva replies as follows:

(i) The tariff language cited in the Answering Brief of Staff and the Public Advocate as described in paragraph 16 above¹³ is misplaced. Delmarva argues that this cited language, taken in its total context, was not meant to prohibit transferring balances, rather it is meant to require Delmarva to have only one point of delivery at a premise and has nothing to do with transferring balances. Indeed, the title of the tariff section is: "C. One Point of Delivery." According to Delmarva, this tariff language simply means that if a customer has houses on two separate properties, it will provide separate bills for each location. It does not prohibit Delmarva from collecting an unpaid balance on one account by transferring this balance to the same customer's other account.

(ii) The reliance of Staff and the Public Advocate on tariff

¹² 11 Del. C. §845.

¹³ "[t]he use of service at two or more separate properties shall not be combined for billing purposes." Section IID, *Op. cit.*

definition language for "Premises" and "Customer"¹⁴ is similarly misplaced as this language does not specifically prohibit balance transfers.

(iii) Generally, according to Delmarva, there is no specific tariff language that prohibits it from transferring balances to collect payments owing and due, and the general language in Section II(D) that provides Delmarva with the ability to refuse to connect new service until all outstanding balances of that customer are paid in full should be construed broadly to give Delmarva the right to transfer balances to effect payment from the same customer.

(iv) Finally, Delmarva argues that forcing Delmarva to resort to the Courts to collect outstanding balances for theft of electric services places an undue burden on its other customers as it cannot recover costs of collection, and thus the simpler method of balance transfers is more cost-effective.

23. In its Reply Brief, Delmarva does not deal further with its Opening Brief contention that certain post-settlement correspondence with Staff and the Public Advocate can be used to justify its balance transfer.

V. DISCUSSION

A. THE FACTS

24. The relevant facts in the Docket at this point in the proceedings are essentially not controverted:

(i) The Complainant, Fishing, Inc., had been taking electric

¹⁴ "[m]ultiple premises under the same name are considered multiple customers." *Op. cit.* fn. 11.

service from Delmarva at two (2) of its premises: (1) for several years at its 434 E. Ayre Street, Newport, DE premises, and (2) since July, 2016 at its 436 E. Ayre Street, Newport, DE premises.

(ii) According to Delmarva, when its service personnel arrived at Complainant's 434 E. Ayre Street premises in December, 2016 to disconnect service for non-payment, it noticed that the meter had been tampered with. Complainant denies tampering with the meter at 434 E. Ayre Street

(iii) Delmarva alleges that after learning of the meter tampering at 434 E. Ayre Street in December, 2016, it proceeded to estimate the amount of electricity theft as it is permitted to do in its tariff. According to Delmarva, this process took Delmarva more than a year.

(v) Delmarva alleges that when it first provided electric service to Complainant's 436 E. Ayre Street address on July, 2016, it was not aware of the meter tampering at 434 E. Ayre Street, although Delmarva admits that when it searched its records at a later date it uncovered 2010 photographs which allegedly showed the meter tampering.

(vi) Once the amount of the alleged electric theft at 434 E. Ayre Street was calculated, Delmarva proceeded to transfer this amount to Complainant's 436 E. Ayre Street account and added this amount to the then outstanding balance at Complainant's 436 E. Ayre Street account. When Complainant did not pay the combined amounts (plus interest and late fees) as billed by Delmarva, on July 10, 2018, Delmarva disconnected Complainant's service at 436 E. Ayre Street for non-payment (of the combined amounts).

B. THRESHOLD LEGAL ISSUE

25. As these proceedings unfolded, it became clear that there existed a threshold legal issue that needed to be considered and dealt with prior to moving forward:

"Is Delmarva permitted to transfer what it believed to be amounts owing and due at a customer's one premise (assuming these amounts are correctly calculated) to that same customer's additional premises account and then to disconnect service at the second premise for non-payment of the combined amounts?"

If the answer is "yes," then these proceedings could continue to determine the additional facts necessary to resolve this docket. If the answer is "no" and Delmarva inappropriately disconnected Complainant's service at its second premises, the principal remaining issue would be the remedy.

26. Because the parties disagreed on this threshold legal issue, I asked, and the parties agreed, that the issue be briefed for a better understanding of the law, rules and regulations involved in this issue of the transfer of customer account balances at one premises to that same customer's account at another premises. Indeed, counsel to the Public Advocate said that the issue of Delmarva transferring balances from a customer's one account to that same customer's other account has been an unresolved issue for some time. She stated that a principal reason the Public Advocate to be involved in this Docket in what would otherwise be a private Complaint was to seek resolution of this fundamental issue.

27. I have carefully reviewed Delmarva's Opening Brief, Staff's and the Public Advocate's Joint Answering Brief and Delmarva's Reply Brief. I have reviewed Delmarva's tariff and associated rules and regulations with respect thereto. And I have reviewed the relevant Delaware case law.

28. As discussed above in the summary of Delmarva's Opening Brief, Delmarva relies on the language of Section IID of its tariff which makes it clear that Delmarva can refuse to open a customer's second account if there remained an outstanding balance on that same customer's other account.

29. I agree with Delmarva's interpretation of Section IID that it would have given Delmarva the right to refuse to connect service at the Complainant's 436 E. Ayre Street premises in July, 2016 until the Complainant had settled its outstanding balances for its 434 E. Ayre Street account. But that isn't what Delmarva did in this matter. It went ahead and connected service to Complainant's 436 E. Ayre Street premises in July, 2016 without seeking to collect outstanding balances at its 434 E. Ayre Street premises.

30. Delmarva states that it was not aware of the meter tampering at Complainant's 434 E. Ayre Street address in July, 2016 when it connected serviced at 436 E. Ayre Street, having said it discovered the tampering upon disconnection of service at Complainant's 434 E. Ayre Street address in December, 2016.¹⁵

31. Staff and the Public Advocate argue that the fact that Delmarva alleges it was not aware of the meter tampering at Complainant's 434 E. Ayre Street address when they opened service at Complainant's 436 E. Ayre Street premises is irrelevant; that all

¹⁵ Staff and the Public Advocate point out that in spite of Delmarva's allegation that it was not aware of the meter tampering at 434 E. Ayre Street when it connected Complainant's service at 436 E. Ayre Street in July, 2016, nevertheless, Delmarva admitted that later research into its records uncovered photos of Complainant's 434 E. Ayre Street meter from 2010 showing the meter tampering.

parties must take the facts where they lie. I agree.

32. Delmarva further relies on an exchange of correspondence post-settlement in PSC Docket 02-231 concerning Delmarva's customer service issues in which Delmarva says it made clear to the Public Advocate and Staff that Delmarva's practices had been and would continue to be to transfer outstanding account balances from a customer's one account to that same customer's different account. However, I agree with Staff and the Public Advocate that no such correspondence can overcome the language in Delmarva's tariff.

33. Staff and the Public Advocate rely on what they contend is the apparently straightforward language in Delmarva's tariff which states: "*[t]he use of service at two or more separate properties shall not be combined for billing purposes.*"¹⁶ I agree with Delmarva that the language cited by Staff and the Public Advocate is not exactly on point that outstanding balances in a customer's one account cannot be transferred to that same customer's other account. But it is close. It certainly seems to suggest a requirement of keeping different accounts to the same customer separate.

34. Further, Delmarva argues that to require Delmarva to resort to Court action to collect outstanding balances when that same customer has another account is not cost-effect. And it argues that the language cited by Staff and the Public Advocate in Section C is inapposite.

35. Delmarva argues that the general intent of Section IID

¹⁶ Paragraph C, *Op. cit.*

is sufficient to permit balance transfers. I disagree. I agree with Staff and the Public Advocate that Delmarva cannot rely on the general language in Section IID of its tariff that permits Delmarva to withhold connections for a customer's outstanding balances at one premise to justify transferring those balances to a customer's separate account absent specific tariff language authorizing such transfer.

36. This seems to me to be particularly apposite when combined with language in the definition of both "Customer" and "Premises" which states "*multiple premises or sites under the same name are considered multiple customers.*"¹⁷ As a result, I believe Delmarva's reliance on Section IID is a stretch.

37. My view is that absent specific tariff language permitting balance transfers between customer's accounts, Delmarva's reliance on the general language in Section IID is misplaced. This is especially true as the language cited by Staff and the Public Advocate, while not exactly on point, certainly seems to require keeping accounts (and thus account balances) to the same customer, separate.

VI. FINDINGS AND RECOMMENDATIONS

A. DECISION

38. Therefore, for the reasons stated above, I find that Delmarva's disconnection of Complainant's service on July 10, 2018 at its 436 E. Ayre Street, Newport, DE premises for failure of Complainant to pay its combined account balances for its two separate

¹⁷ *Op. cit.*, fn 11.

premises was not permitted.

39. Should Delmarva wish to be able to transfer outstanding customer balances, it should avail itself of the appropriate process to amend its tariff with specific language providing for such balance transfer together with the terms and conditions with respect thereto.

40. Nothing herein should be read to suggest Delmarva does not have the right to proceed to collect any legitimate outstanding balances through the Courts, either civilly or criminally, if it can prove theft of electric services (an issue which this Interim Decision does not consider). Past Delaware cases have made it clear that the Courts, not the Commission, are the appropriate vehicle for collection of unpaid account balances.¹⁸

B. REMEDY.

41. I have dealt with the core threshold issue of these proceedings and decided that Delmarva's attempt to transfer Complainant's outstanding account balance on one account to Complainant's other account was not permitted. Therefore its disconnection of Complainant's service on July 10, 2018 for non-payment of both combined balances was not permitted. Now what?

42. In my view, the most expeditious and reasonable process for moving forward is for Delmarva to promptly send to the Complainant a bill for the outstanding electric services at Complainant's 436 E. Ayre Street premises as of the date the service was disconnected on July 10, 2018. The Complainant shall have thirty (30) days to make payment. At such

¹⁸ *Georgia-Pacific v. Delmarva Power & Light*, 1992 WL 396397 (1992)

time as Complainant makes payment for these services, Delmarva should forthwith restore Complainant's electric service at its 436 E. Ayre Street address.

43. Because Delaware law does not permit Delmarva to disconnect electric service when a legitimate billing dispute exists,¹⁹ should, upon receipt of Delmarva's bill for services at its 436 E. Ayre street premises as of July 10, 2018, Complainant believe that a bona fide billing dispute exists as to that account, it should promptly notify me that it believes a bona fide billing dispute exists as to the charge for electric services at its 436 E. Ayre Street premises. Then and in that case, I will promptly ascertain whether such a bona fide billing dispute exists (rather than a non-bona fide billing dispute). If I determine, and the Commission agrees, that a bona fide billing dispute exists, Delmarva must promptly restore Complainant's service at that address and leave it to the Delaware Courts to resolve the billing matter. If I determine, and the Commission agrees, that a bona fide billing dispute does not exist, Delmarva shall be under no obligation to restore service and Complainant's remedy, if any, would lie in the Delaware Courts.

C. PROPOSED ORDER

44. I have attached hereto as Exhibit A a copy of a proposed form of Order for the consideration of the Commission.

¹⁹ See *Artesian*, *Op. cit.*

Respectfully submitted,

/s/

Glenn C. Kenton,
Hearing Examiner

Dated: December 12, 2019

